Date of the Judgment Sought to Be Revewied and Date Upon Which Application for Appeal Was Presented.

The date of the judgment rendered by the Superior Court of the County of San Diego, State of California, is April 1, 1932. The judgment of the Supreme Court of the State of California, affirming said judgment of said Superior Court of San Diego County, was rendered and filed June 1, 1933, which is the judgment sought to be reviewed. The date upon which the application for this appeal is presented is August 10, 1933.

Nature of the Case.

The defendants were jointly accused by indictment of the crime of conspiring to violate the Alien Land Act of the State of California. (Stats. 1921, p. lxxxiii; Stats. 1923, p. 1020; Stats. 1927, p. 881.) The indictment alleged that on or about the 27th day of August, 1931, defendants did wilfully, unlawfully and feloniously combine, conspire, confederate and agree together, by unlawful means, to bring about and accomplish the possession, enjoyment, use, cultivation and occupation for agricultural purposes by defendant H. Doi, and thereafter to continuously keep and maintain the defendant H. Doi in such possession, enjoyment, use, cultivation and occupation for agricultural purposes, and to the use and beneficial interest of said H. Doi, of certain land situated in the County of San Diego, which land was agricultural land; that defendant H. Doi is an alien ineligible to citizenship, and was not authorized by law or any treaty between the United States and the Empire of Japan, or any other nation or country, to acquire, possess, enjoy, use, cultivate or occupy real property, nor have either in whole or in part any beneficial use of or interest in real property for agricultural purposes.

It further alleges, while the conspiracy was in effect, to wit, on or about August 13, 1931, and in furtherance of and to accomplish and effect the purposes and objects thereof, the defendants did the following acts, viz: That defendant George Morrison put the defendant H. Doi in possession of, and did permit, aid and encourage H. Doi to go into possession of and to use, enjoy, cultivate and occupy said land, and that said H. Doi did go into possession of said land and did use, enjoy, cultivate and occupy same, and did raise and harvest crops thereon for his own use and benefit, contrary to the statute and against the peace and dignity of the people of California. Trial by jury was waived, with the consent of the district attorney, and the action was tried before the court. The only evidence introduced consists of the following stipulation:

> "It is stipulated that the defendant George Morrison is, and was, at all times mentioned in the indictment, a native born citizen of the United States of America, and lessee of the land described in the said amended indictment; that said land is agricultural land, and at all times mentioned in said amended indictment has been used exclusively for agricultural purposes; that on or about the 27th day of August, 1931, the said George Morrison did knowingly and wilfully combine, confederate and agree with one H. Doi, to bring about and accomplish the possession, enjoyment, use, cultivation and occupancy for agricultural purposes by said H. Doi, and thereafter to continuously keep and maintain the said H. Doi in such possession, enjoyment, use, cultivation and occupancy, for agricultural purposes, and to the use and beneficial interest of the said H. Doi, of all of the said land, and thereafter, and pursuant to said confederation, combination and agreement, and as a result thereof, and in furtherance of, and to accomplish and effect the purposes and objects thereof, the said George Morrison did put the said H. Doi into pos-

session of, and did permit, aid and encourage the said H. Doi to go into possession of, and to use, enjoy, cultivate and occupy the said land, and said H. Doi did go into possession of said land, and did use, enjoy, cultivate and occupy the same, and did raise and harvest crops thereon, for the use and benefit of said defendants and each of them."

It was on this stipulation and the allegations in the indictment that the court found the defendants guilty. The appeal was from the judgment and from an order denying a motion for a new trial.

The points raised are that Section 9*a* of the Alien Land Act, as adopted in 1927 (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure, also adopted in 1927, purporting to cast upon the defendant H. Doi the burden of proving he was a citizen of the United States or eligible to become one, where no proof whatsoever was introduced as to his citizenship or ineligibility to citizenship, but the indictment alleged that he was ineligible to citizenship, is unconstitutional and void, being discriminatory and in violation of the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and as violating the due process of law clause of the Fourteenth Amendment to the Constitution of the United States, and as violating Section 13, Article I, of the Constitution of the State of California.

Section 9*a* of this Act, thus attacked, reads as follows:

"SEC. 9*a*. Citizenship Must be Proved by Defendant.—In any action or proceeding, civil or criminal, by the state of California, or the people thereof, under any of the provisions of this act, when the proof introduced by the state, or the people thereof, establishes the acquisition, possession, enjoyment, use, cultivation, occupation, or transferring of real property or any interest therein, or the having in whole or in part the

beneficial use thereof by any defendant, or any of such fact, and the complaint, indictment or information alleges the alienage and ineligibility to United States citizenship of such defendant, the burden of proving citizenship or eligibility to citizenship shall thereupon devolve upon such defendant."

The ruling of the Superior Court of San Diego County, which brings this case within the jurisdiction of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, is the decision of guilty, based solely on the stipulation herein set out, and the benefit and effect of Section 9*a* if the Alien Land Act (Stats. 1927, p. 881), and Section 1983 of the Code of Civil Procedure of California.

The ruling of the Supreme Court of the State of California, being the highest court in the State of California having jurisdiction to decide this matter, which brings this case within the jurisdiction of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, is the decision of said court affirming the judgment of said superior court, and holding that Section 9*a* of said Alien Land Act (Stats. 1927, p. 881) and Section 1983 of the Code of Civil Procedure of California, were constitutional, and did not violate said Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The cases believed to sustain the jurisdiction of the Supreme Court of the United States are as follows:

Section 1 of the Fourteenth Amendment to the Constitution of the United States are as follows:

"SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuni-

ties of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The validity of the legislation creating presumptions similar to that provided for by Section 9*a* of said Act has frequently been before the courts of this and other jurisdictions, with the result that it has uniformly been declared invalid.

McFarland v. *American Sugar Refining Co.*, 241 U. S. 79, where the Supreme Court held that a presumption to the effect that any person engaged in the business of refining sugar within the State of Louisiana who should systematically pay in Louisiana a less price for sugar than he pays in any other State, shall be *prima facie* presumed to be a party to a monopoly or conspiracy in restraint of trade, was invalid as being in violation of the Fourteenth Amendment to the Constitution of the United States.

A recent decision of the Supreme Court of the United States is to the same effect and sustains appellants' position, viz: *Manley* v. *Georgia*, 279 U. S. 1, where the Court held unconstitutional a statute of Georgia which allowed a conviction of fraud upon mere proof of insolvency, on the ground that the statutory presumption was not rational and that the connection between the fact proved and that presumed was not rational.

To the same effect is *Western & Atlantic R. R.* v. *Henderson*, 279 U. S. 639, holding unconstitutional a statute providing for a shifting of the burden of proof on the issue of negligence upon the mere proof of a collision, upon the ground that a statute cannot provide for the shifting of the burden of proof on the basis of a presumption which is arbitrary and irrational.

According to the unbroken line of authorities, a presumption created by statute and based upon proof of such an unconnected and unrelated fact cannot be sustained as a valid exercise of legislative power.

State v. *Lapointe*, 81 N. H. 227, 123 Atl. 692.

O'Neill v. *U. S.*, 19 Fed. (2d) 322, held that Congress could not reasonably enact that possession of unstamped narcotic drugs should be *prima facie* evidence of a violation of the first penal provision, Section 1, of the Harrison Anti-Narcotic Act.

Simpkins v. *State*, 249 Pac. 168, decided that a statute of Oklahoma providing that if a person driving an automobile had on or about his person any intoxicating liquors, that fact would constitute *prima facie* evidence of such person having driven while intoxicated, could not stand; that the inference between the fact of possession and the presumption of intoxication was too remote.

The following cases, we believe, also sustain the jurisdiction of the Supreme Court of the United States:

Bailey v. *Alabama*, 219 U. S. 219, 31 Sup. Ct. Rep. 145;
State v. *Wilson*, 1 Atl. 415, 15 R. I. 180;
State v. *Potello*, 119 Pac. 1023;
State v. *Beswick*, 13 R. I. 211, 36 Am. Rep. 102;
Ex parte Smith, 218 Pac. 708;
In re Opinion of Justices, 208 Mass. 619, 94 N. E. 1044;
State v. *Crimmett*, 193 Pac. 380;
State v. *Divine*, 4 S. E. 477;
Brightman v. *U. S.*, 7 Fed. (2d) 532;
In the Matter of Guillermo D. Kotta, 187 Cal. 27, 200 Pac. 957;
Southern Railway Company v. *Green*, 216 U. S. 419.

People v. *Quarez*, 196 Cal. 404, and *People* v. *Frey*, 165 Cal. 140, both hold that the question of alienage is a part

of the *corpus delicti* and must be proved by the prosecution or by evidence in the case on behalf of the prosecution. Therefore, if alienage is a part of the *corpus delicti*, proof must be introduced to establish or tend to establish same. This was not done, as in the case at bar no evidence of alienage was offered, the only mention of same being in the allegation in the indictment.

Brightman v. *U. S.*, 7 Fed. (2d) 532, held, in a prosecution under the Harrison Narcotic Act, the prosecution was bound to prove as an essential element of its case that the narcotics had been purchased within the district, although the statute provided that possession of the drugs should be *prima facie* evidence of the violation of the Act.

State v. *Divine*, 4 S. E. 477, 98 N. C. 778, the statute there provided that when stock was killed or injured by a running engine, in certain counties, proof of that fact would be *prima facie* evidence of negligence of certain officials of the railroad company. The statutory presumption was held to be unconstitutional, as being unsupported by any reasonable connection between proof and the inference of guilt.

State v. *Crimmett*, 193 Pac. 380, 33 Idaho 203, defendant was convicted of grand larceny of a cow. The court instructed the jury, in accordance with the provisions of a State statute, that any person who slaughtered cattle must retain in his possession the hide of such cattle, with the ears attached, for a period of thirty days, and that proof of the failure of any person to do so should be *prima facie* evidence of the commission of the crime of grand larceny as to cattle slaughtered. The Supreme Court of Idaho held that there was no connection or rational relationship between the fact proved and the ultimate fact presumed, and that such a statute shifted the burden of proof, and in a

criminal case deprived the defendant of the protection of his constitutional guaranties.

Hall v. *Johnson*, 169 Pac. 515.

State v. *Lapointe*, 123 Atl. (N. H.) 692, involved a statute which prohibited the possession of intoxicating liquor which had been illegally acquired. The statute provided that the possession of any intoxicating liquor should be *prima facie* evidence of the violation thereof. The trial court instructed the jury that if they found that possession was proved, they must also find that the possession was illegal. No evidence was introduced upon the point by the defense. The court held the statute was unconstitutional.

People v. *Toynbee*, 20 Barb. 168;
Wynehamer v. *The People*, 13 N. Y. 378;
People v. *Lyon*, 27 Hun. 180;
People v. *Cannon*, 34 N. E. 759, 139 N. Y. 32;
Hammond v. *State*, 84 N. E. 416, 78 Ohio St. 15;
State v. *Momberg*, 103 N. W. 566;

Under Section 9*a* of the Alien Land Act, the offense consists of three things:

1. Being an alien;

2. Being ineligible to citizenship;

3. Owning, leasing, or enjoying the use of agricultural land in California.

Under Section 9*a* it is necessary for the State to prove nothing except that the defendant owns or has leased farm land in California, and has merely to allege that he is an ineligible alien. See 17 Cal. Law Rev. 577, 578.

J. MARION WRIGHT,

Respectfully submitted,

Attorney for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 487

GEORGE MORRISON AND H. DOI, APPELLANTS,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

AMENDMENT TO STATEMENT OF THE GROUNDS OF JURISDICTION, DISCLOSING THE BASIS UPON WHICH IT IS CONTENDED THE SUPREME COURT OF THE UNITED STATES HAS JURISDICTION UPON APPEAL TO REVIEW THE JUDGMENT IN QUESTION.

Filed September 19, 1933.

Come now appellants and present this their amendment to the statement of grounds of jurisdiction, disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction on appeal to review the judgment in question, to be considered part of the original

statement of grounds of jurisdiction, and to become part of same, said amendment containing authorities which were inadvertently omitted from the statement of grounds of jurisdiction disclosing the basis upon which it is contended the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question, and perhaps technically should have been contained therein, although appellants believe the said statement of the grounds of jurisdiction as a whole fully complies with Rule 12, paragraph 1, of Rules of the Supreme Court of the United States.

The statutory provision believed to sustain the jurisdiction of the United States Supreme Court is as follows: Section 344 of United States Code, Annotated, Chap. 9, Title 28 (Judicial Code, Section 237, amended):

> "Appellate Jurisdiction of Decrees of State Courts; Certiorari.—(*a*) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ.
>
> "(*b*) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ

of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

"(*c*) If a writ of error be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the writ of error was allowed shall be regarded and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the court or judge by whom the writ of error was allowed: *Provided*, That where in such a case there appears to be no reasonable ground for granting a petition for certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs, as provided in section 878 of this title. (R. S. 690, 709; Mar. 3, 1911, c. 231, 236, 237, 36 Stat. 1156; Dec. 23, 1914, c. 2, 38 Stat. 790; Sept. 6, 1916, c. 448, 2, 39 Stat. 726; Feb. 17, 1922, c. 54, 42 Stat. 366; Feb. 13, 1925, c. 229, 1, 43 Stat. 937.)"

By the Act of January 31, 1928, Chap. 14, 45 Stat. 54, the writ of error was abolished and all relief which heretofore could be obtained by writ of error is now obtainable by appeal. This Act is as follows:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.
>
> "Sec. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required: *Provided, however,* That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts."

Section 2 of the Act of January 31, 1928, above quoted, was amended April 26, 1928, Chap. 440, 45 Stat. 466, as follows:

> "An Act to amend section 2 of an Act entitled 'An Act in reference to writs of error,' approved January 31, 1928, Public, Numbered 10, Seventieth Congress.
>
> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of an Act entitled 'An Act in reference to writs of error,' approved January 31, 1928, Public, Numbered 10, Seventieth Congress, be, and it is hereby, amended to read as follows:
>
> " 'Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and

of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error.' "

The above provisions are the statutory provisions believed to sustain the jurisdiction of this Court to entertain this appeal, and are the statutory and constitutional authority for this Court to hear and determine such a case. The cases believed to sustain the jurisdiction are as follows:

Ruling of the highest State court, basing its decision invalidating statute on due process clause, presents Federal question reviewable by Supreme Court.

Blodgett v. *Silberman* (Conn. 1928), 48 S. Ct. 410, 277 U. S. 1, 72 L. Ed. 249.

Whether a State court denied rights asserted under local law protection guarantee by the Federal Constitution is a question on which the United States Supreme Court's judgment may be invoked.

Broad River Power Co. v. *State of South Carolina. ex rel. Daniel* (1930), 50 S. Ct. 401, 281 U. S. 537, 74 L. Ed. 1023.

State court's opinion is not final on claim arising under Federal Constitution.

Brinkerhoff-Farris Trust & Savings Co. v. *Hill* (1930), 50 S. Ct. 451, 281 U. S. 673, 74 L. Ed. 1107 reversing (1929) 19 S. W. 2d 746, 323 Mo. 180.

Where the State court entertained the question of constitutionality of a State statute, but holding same valid, the United States Supreme Court has jurisdiction on certiorari.

Cumberland Coal Co. v. *Board of Revision of Tax Assessments in Greene County* (Va. 1931), 52 S. Ct. 48 reversing (1930) 302 Pa. 179.

State court's finding that ordinance fixing rates for water power did not impair prior contract is not conclusive on this Court.

John P. King Mfg. Co. v. *City Council of Augusta* (Ga. 1928), 48 S. Ct. 489, 277 U. S. 100, 72 L. Ed. 801.

Where State statute is challenged in State court under due process clause, the case is properly before the Supreme Court.

Miller v. *Schoene* (Va. 1928), 48 S. Ct. 246, 276 U. S. 272, 72 L. Ed. 568.

The Supreme Court of the United States has jurisdiction when New York Court of Appeals affirmed appellate division, which upheld State statute under Federal Constitution not referred to by Court of Appeals.

People v. *State of New York, ex rel. Bryant* v. *Zimmerman* (N. Y. 1928), 49 S. Ct. 61, 278 U. S. 63, 73 L. Ed. 184.

The original statement of jurisdiction shows there exists facts sufficient to bring the case within the statutory or constitutional authority for the United States Supreme Court to hear and determine this case.

Respectfully submitted,

J. MARION WRIGHT,
Attorney for Appellants.